

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
EASTERN DIVISION**

TURTLE MOUNTAIN BAND OF CHIPPEWA  
INDIANS, *et al.*

Plaintiffs,

v.

ALVIN JAEGER, in his official capacity as Secretary  
of State of North Dakota,

Defendant.

Case No. 3:22-cv-00022-PDW-ARS

**PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE A SUPPLEMENTAL  
COMPLAINT**

Pursuant to Fed. R. Civ. P. 15(d), Plaintiffs respectfully request leave to file the attached Supplemental Complaint. Defendant has indicated he does not oppose the motion, and the parties agreed that Defendant should be provided 30 days to file a responsive pleading.

Rule 15(d) provides that “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any . . . event that happened after the date of the pleading to be supplemented. . . . The court may order that the opposing party plead to the supplemental pleading within a specified time.” Fed. R. Civ. P. 15(d). In the time since Plaintiffs filed their Complaint, the November 8, 2022 elections were conducted using the state legislative redistricting map that Plaintiffs challenge as a violation of Section 2 of the Voting Rights Act. Those election results make clear that the enacted redistricting plan not only dilutes Native American voting strength with respect to the state house districts in northeastern North Dakota but also with respect to their opportunity to elect a candidate of choice to the state senate.

As Plaintiffs explain in the attached Supplemental Complaint, the 2022 election results confirm that the configuration of districts in northeastern North Dakota, specifically District 9, state house subdistricts 9A and 9B, and District 15 fail to provide Native American voters an equal opportunity to elect their candidates of choice to the state senate and state house. In the redrawn District 9, which now extends from Rolette County into overwhelmingly white portions of Towner and Cavalier Counties, incumbent Native American state senator Richard Marcellais lost his reelection bid. Senator Marcellais, who held the seat since 2006, was the overwhelming choice of Native American voters, but white voters cast their ballots sufficiently as a bloc to defeat his reelection in the redrawn district. An enrolled member of the Tribe has served as District 9 state senator since Daniel Jerome was elected as the first ever Native American to serve in the state senate in 1990. But now, for the first time in 32 years, no member of a North Dakota Native American tribe will serve in the North Dakota state senate as a result of the 2021 redistricting plan.

In subdistrict 9A, which Plaintiffs contend is unlawfully packed with Native American voters, the Native American candidate for state house soared to victory with nearly 70% of the vote. But in subdistrict 9B, which is predominantly white but contains a sizeable Native American population cracked from the population in subdistrict 9B, the incumbent Representative Marvin Nelson—the candidate of choice of Native American voters—was soundly defeated as a result of white bloc voting. While the prior configuration of District 9 allowed Native American voters to elect their candidate of choice to two state house seats, the enacted redistricting plan reduces that opportunity to a single state house district.

Likewise, the candidates of choice of Spirit Lake Native American voters in adjacent District 15 were defeated as a result of white bloc voting. Plaintiff Collette Brown, an enrolled member of the Spirit Lake Tribe, was the candidate of choice for Native American voters for state

senate in District 15 and was defeated by her white opponent. In the state house election in District 15, Native American candidate Heather Lawrence-Skadsem, who was the overwhelming candidate of choice of Native American voters, was defeated by her two white opponents.

As Plaintiffs explain in the attached Supplemental Complaint, Native American voters' candidates of choice for state senate and state house would have prevailed in an alternatively configured district that joins the Turtle Mountain and Spirit Lake reservations. But instead the enacted plan reduced from three to one the number of state legislative races in which Native American voters were able to elect their candidates of choice in the November 2022 election.

In addition to these supplemental factual allegations regarding the November 2022 election, Plaintiffs also clarify that they seek for elections to be held in a remedial district in November 2024 to ensure that Native American voters are not required to wait until 2026 to cast ballots under a map that complies with the Voting Rights Act.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs' motion should be granted and Defendant should be provided 30 days in which to file a responsive pleading.

December 6, 2022

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Mark P. Gaber  
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*Counsel for Plaintiffs*